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July 28, 2025

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: AB 1321, *Ohi-Rail Corporation — Discontinuance —
In Perry and Muskingum Counties, Ohio*

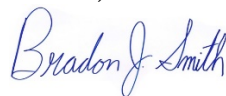
AB 167 (445-N), *Conrail Abandonment of Lines in
Zanesville, Ohio*

Dear Ms. Brown:

Enclosed is the **Newark, Heath, & Buckeye Lake Scenic Railway's
Reply to the Ohio Rail Development Commission Motion for Leave** for the
respective captioned matters.

Should any questions arise regarding this filing, please feel free to
contact me. Thank you for your assistance on this matter.

Yours,



Bradon J. Smith
Attorney for the Newark, Heath, & Buckeye
Lake Scenic Railway

Enclosure

CC: Ohio Rail Development Commission via counsel of record.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1321X

OHI-RAIL CORPORATION — DISCONTINUANCE EXEMPTION —
IN PERRY AND MUSKINGUM COUNTIES, OHIO

AB 167 (Sub-No. 445N)

CONRAIL ABANDONMENT OF LINES IN ZANESVILLE, OHIO

**Newark, Heath & Buckeye Lake Scenic Railway Reply to Ohio Rail
Development Commission Motion for Leave to File**

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Attorneys for the Newark,
Heath & Buckeye Lake Scenic
Railway

Dated: July 28, 2025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

AB 1321X

OHI-RAIL CORPORATION—DISCONTINUANCE EXEMPTION —
IN PERRY AND MUSKINGUM COUNTIES, OHIO

AB 167 (Sub-No. 445N)

CONRAIL ABANDONMENT OF LINES IN ZANESVILLE, OHIO

INTRODUCTION

On July 3, 2025 the Ohio Rail Development Commission (the “Commission”) told the Board that it consented to the preliminary injunction relief Petitioner Newark Heath & Buckeye Lake Scenic Railway, d/b/a Zanesville and Western Railroad Company (“Z&W” or “Petitioner”) asked the Board to grant in the captioned dockets. Petitioner had asked the Board to “enter a preliminary injunction in these matters against further removal of track for the pendency of Z&W’s petition to reopen.” See Petitioner’s June 16, 2025 “Motion for Preliminary Injunction,” 8 (“Preliminary Injunction Motion”). In that July 3, 2025 filing the Commission agreed to exactly such a prohibition: “. . . ORDC agreed not to remove the trackage at issue until the Board issues a decision on the Petition.” Commission July 3, 2025 “Unopposed Request for Extension of Time.” Four days later, the Commission observed that its consent mooted the issue: “this also in effect moots

the need for the Board to issue an injunction.” Commission July 7, 2025 “Reply to [Petitioner’s] Preliminary Injunction Motion”¹ 16 (Document No. 309742).

Setting aside the curiosity and academic nature of this motion for leave and the concurrent reply for an issue the Commission acknowledged as moot, the Board should disregard and strike both. That is because the Commission July 3, 2025 consent mooted the Preliminary Injunction Motion to make its Motion for Leave and Reply to Petitioner’s Preliminary Injunction Motion “redundant” within the meaning of 49 C.F.R. § 1104.8.

BACKGROUND

Z&W’s interest in this matter is focused on preserving the human environment. Petition to Reopen, Exhibit A, 2, Third Recital. By leasing track from the Commission Z&W seeks to preserve track for the educational of the public via Z&W’s excursion operation. *Id.* To that end, once it became clear in February 2025 that the Commission was undertaking track salvage (See Petition to Reopen, Exhibit C, 3) for track that Z&W leased, Z&W asked the Board via a series of June 16, 2025 filings in the captioned matters to reopen the subject discontinuance. The Commission has opposed Z&W’s Petition to Reopen but consented to what is “in effect” a preliminary injunction to preserve the status quo. Reply to Preliminary Injunction Motion, 16.

¹ This document was untitled.

ARGUMENT

The Commission's July 3, 2025 consent should cause the Board to disregard any argument it makes in its July 7, 2025 Motion for Leave and Reply to Petitioner's Preliminary Injunction Motion for two reasons (1) the Commission has mooted any need for preliminary relief such that (2) its reply to the Preliminary Injunction Motion is entirely "redundant." 49 C.F.R. § 1104.8.

The Board may deny motions when the underlying issues have become moot. See, e.g., *Application of the Nat'l R.R. Passenger Corp. under 49 U.S.C. § 24308(E)—CSX Transp., Inc., and Norfolk S. Ry. Co.*, FD 36496, at 3 (STB served Jan. 27, 2022) (denying a party's separate motion for clarification and motion to strike after finding that the Board's previous decision granting a request for intervention rendered the issues underlying the motions moot). We have that here: the Commission has said it will not salvage track from the Glass Rock Branch until the Board has reached a decision on the Petition. Commission Unopposed Motion for Extension of Time at 1. Accordingly, the track will remain in place on the Glass Rock Branch until the Board has reached its decision on the Petition to Reopen. This means that the preliminary injunction the Commission wants to litigate with its Motion for Leave and Reply to Preliminary Injunction Motion have been rendered moot by the Commission's own actions. The Commission said best saying in its July 7, 2025 Reply to Preliminary Injunction Motion that its July 3, 2025 filing "in effect moots the need for the Board to issue an injunction." Reply to Preliminary Injunction Motion, 16.

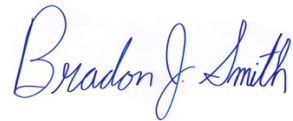
Once the reason for the Preliminary Injunction Motion is mooted, anything the Commission offers in opposition to that mooted motion is "redundant"—"exceeding what is necessary." Compare 49 C.F.R. § 1104.8 with Merriam-Webster Online Dictionary, "redundant: '(a) exceeding what is necessary . . .'" (available at <https://www.merriam-webster.com/dictionary/redundant>). Accordingly, anything

the Commission offers in opposition to the Preliminary Injunction Motion should be stricken under the Board's rules. Again, no drafting let alone consideration of these arguments could ever be necessary—which makes them redundant under 49 C.F.R. § 1104.8—because the Commission's agreement not to remove track "moots the need for the Board to issue an injunction."

CONCLUSION

For reasons set forth above, Petitioner respectfully requests the Board deny the Commission's Motion for Leave.

Respectfully submitted,



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Dated: July 28, 2025